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EXAMINER

BHARADWAJ, KALPANA

ART UNIT PAPER NUMBER

2129

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/736,657

Applicant(s)

LOPEZ-ESTRADA, ALEX A.

Examiner

KALPANA BHARADWAJ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-17, 19-24, 26, 27, 29-31 and 34-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-17, 19-24, 26, 27, 29-31 and 34-37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to a Request for Continued Examination filed Jan 25, 2008 for application number 10/736657.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Jan 25, 2008 has been entered.

Status of Claims

3. Claims 11-17, 19-24, 26-27, 29-31 and 34-37 are pending in this application. Claims 1-10, 18, 25, 28 and 32-33 have been cancelled.

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

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Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The claims fail to provide a tangible result, and there must be a practical application, by either

- 1) transforming (physical thing) or
- 2) by having the **FINAL RESULT** (not the steps) achieve or produce a useful (specific, substantial, AND credible), concrete (substantially repeatable/non-unpredictable), AND tangible (real world/non-abstract) result.

A claim that is so broad that it reads on both statutory and non-statutory subject matter, must be amended. A claim that recites a computer that solely calculates a mathematical formula is not statutory.

Claims 11-16, 21-23 are rejected under 35 U.S.C. 101 because the claimed invention does not provide a useful, concrete and tangible result.

Claim 11, line 6 specifies "if". What happens if the workload is not determined to resemble anything?

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 17, 19-20, 24, 26, 31, 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Reinemann (USPN 20030115118, referred to as **Reinemann**).

As to **Claim 17**, Reinemann anticipates generating, by a computer system (**Reinemann**, Fig 1: CPU, storage, processor), a lookup index (not further defined, reads on among other things, memory pointers) to one or more pre-establishes sets *configuration parameter values* (not further defined, reads on e.g., Reinemann, e.g., ¶ 0010 - 0013 and abstract; 'Generating a lookup index' clearly reads on values based on current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources... .' of Reinemann.)

Note: the claimed *configuration parameter values* are not further defined, and reads on many different types of *configuration parameter values*. For example, the applied art (Reinemann) discloses what amounts to load balancing which includes, among other things, actually changing *configuration parameter values* at least in the sense that processors are reconfigured based on performance. Knowing the "performance

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status" is equivalent to knowing the *configuration parameter values*.

based at least in part-on an output of an index function configured to accept as input one or more measured performance values associated with one or more corresponding observed performance events associated with a platform's execution of a workload (Reinemann, ¶ 0011 ; 'Index' of applicant is equivalent to 'archived' by Reinemann.); and

selecting, by a computer system (Reinemann, Fig 1: CPU, storage, processor), one of one or more pre-established sets of configuration parameter values, based at least in part on the generated lookup index (Reinemann, ¶ 0013), for application to configure the platform (Reinemann, ¶ 0012; The policy manager uses the performance status for determination and the performance status is indexed (equivalent to archived of Reinemann).

As to **Claim 19**, Reinemann anticipates performing a selected one of receiving the one or more performance events observed; and monitoring said execution of the workload by the platform. (Reinemann, ¶ 0014; The policy manager monitors the resource

utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.)

As to **Claim 20**, Reinemann anticipates performing a selected one of providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 0013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform, the platform being a part of the system. (Reinemann, abstract; 'Applying' the set of applicant .is equivalent 'releasing a portion' of Reinemann.)

As to **Claim 24**, Reinemann anticipates a storage medium having stored therein programming instructions (Reinemann, ¶ 0002; 'Storage medium' of applicant is equivalent to 'disk - storage' of Reinemann.) designed to enable the apparatus to generate a lookup index to one or more pre-established sets of configuration parameter values (Reinemann, ¶ 0013 and abstract;

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'Generating a lookup index' is nothing more than values based on current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources ...' of Reinemann. 'Configuration parameters' of applicant is equivalent to 'parameters configured' of Reinemann.), based at least in part on an output of an index function configured to accept as input one or more measured performance values associated with one or more corresponding observed performance events associated with a platform's execution of a workload (Reinemann, ¶ 0011; 'Index' of applicant is equivalent to 'archived' by Reinemann.); and

select one of one or more pre-established sets of configuration parameter values, based at least in part on the generated index, for application to configure the platform (Reinemann, ¶ 0012; The policy manager uses the performance status for determination and the performance status is indexed (equivalent to archived of Reinemann).); and at least a processor coupled to storage medium to execute the programming instructions. (Reinemann, ¶ 0002)

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As to **Claim 26**, Reinemann anticipates receiving the one or more performance events observed; monitoring said execution of the workload by the platform (Reinemann, ¶ 0014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.); providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 10013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform, the platform being a part of the system. (Reinemann, abstract; 'Set1 and 'applying' of applicant is equivalent to 'policy' and 'releasing a portion' of Reinemann.)

As to **Claim 31**, Reinemann anticipates

a machine readable medium; (Reinemann, ¶ 0002; 'Machine readable medium' of applicant is equivalent to 'disk storage' of Reinemann.); and

a plurality of programming instructions on the machine readable medium, designed to enable an apparatus to observe one

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or more performance events associated with a platform's execution of a workload or receive the one or more performance events observed (Reinemann, ¶ 0012, abstract 'Performance events', 'platform' 'observed' of applicant are equivalent to 'utilization the resources', 'network or processors' 'obtains the performance status' of Reinemann.), and to at least contribute. In selection of one or more configuration parameters values for application to configure the platform, based at least in part on the one or more performance events observed, (Reinemann, ¶ 0012 and ¶ 0013; The 'policy manager' selects which policy (equivalent to 'set' of applicant) to implement and each policy includes parameters.) wherein the at least contributing includes the platform

determining whether the workload resembles one of one or more references workloads (Reinemann, ¶ 0013; 'reference workload' of applicant is equivalent to 'usage pattern' of Reinemann.), based at least in part on the received one or more performance events observed, the resembled reference workloads to be employed to facilitate said selection of one or ore configuration parameter values (Reinemann, abstract, ¶ 0013; 'Events observed' and 'performance events' of applicant is equivalent to 'monitor and 'resource utilization' of Reinemann.

'Configuration parameters' of applicant is equivalent to
'parameters configured' of Reinemann); or

generating a lookup index to one or more pre-established
sets (Reinemann, ¶ 0013 and abstract; 'Generating a lookup
index' is nothing more than values based of current resource
workload. 'One or more sets configuration parameter values' of
applicant is equivalent to 'parameters configured to specify a
target range for each of the resources.. . ' of Reinemann) of
configuration parameter (Reinemann, ¶ 0013;

'Configuration parameters' of applicant is equivalent- to
'parameters configured' of

Reinemann.) values based at least in part on the output of an
index function configured to accept as input one or more
measured performance values corresponding to the received
observed one or more pre-established sets of configuration
parameter values (Reinemann, ¶ 0013 and ¶ 0014; 'Performance
events' of applicant is demonstrated by 'resources operates
above the upper threshold' of Reinemann. 'Selection'. . .
'configuration parameters' of applicant is performed by the
'centralized policy manager' which 'manages resource
utilization' of Reinemann).

As to **Claim 36**, Monitoring at least a selected one of a processor performance counter (Reinemann, ¶ 0011; 'Processor performance counter' of applicant is illustrated by the 'accounting manager' of Reinemann.), an OS performance counter (Reinemann, ¶ 0011), and a chipset performance counter (Reinemann, ¶ 0011), while the platform executes the workload.

As to **Claim 37**, One or more of processor configuration parameters values (Reinemann, ¶ 0028; 'Processor configuration parameters' of applicant is equivalent to 'memory usage' of Reinemann.), OS configuration parameter values (Reinemann, ¶ 0028; 'Os configuration parameter' of applicant is equivalent to 'processor utilization' of Reinemann.), and chipset configuration parameter values. (Reinemann, ¶ 0028; 'Chipset configuration parameter' of applicant is equivalent to 'virtual memory swap file usage' of Reinemann.)

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 11-16, 21-23, 27, 29, 30, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Reinemann**, as set forth above, and further in view of Chiu (USPN 2002/0186658, referred to as **Chiu**).

As to **Claim 11**, Reinemann teaches determining (Reinemann, ¶ 0012; 'Determining' of applicant is accomplished by the 'policy manager' of Reinemann), by a computing system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system).

Although Reinemann teaches a workload and load balancing (Reinemann; ¶ 0010-0014, especially, 0014: processors) and a reference workload (Reinemann; ¶ 0013: usage patterns) he fails to teach whether a workload executed or being executed by a platform resembles a reference workload.

Chiu teaches whether a workload executed or being executed by a platform resembles a reference workload. (As calls come into the MPLS network, the traffic engineering modules decide what configuration or path to use for each incoming call which

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comprises varying bandwidth and delay parameters, Chiu, ¶ 0023-0029, especially 0028; 'Reference workload' of applicant is equivalent to 'OSPF' of Chiu.)

It would have been obvious to a person having ordinary skill in the art at the time of applicant's invention to modify the teachings of Reinemann by going into specific detail of an accepted that can be used with the method as taught by Chiu to have whether a workload executed or being executed by a platform resembles a reference workload.

For the purpose of integrating the method into the real world situation. Reinemann teaches based at least in part on one or more performance events observed from monitoring the platform's execution of the workload (Reinemann, 'Performance events' of applicant is equivalent to 'respective resources' of Reinemann.); and if the workload is determined to resemble the reference workload, performing, by the computer system (Reinemann, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system), a selected one of selecting, by the computing system (Reinemann, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system) a set of one or more configuration parameter values pre-selected for the platform to execute the resembled reference workload (Reinemann,

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¶ 0013; 'Set' of applicant is equivalent to 'policy' of Reinemann.) and providing, by the computing system (**Reinemann**, Fig. 2: Policy manager 23 is shown to interface with a disk storage and a CPU which establish a computing system), information about the determined resembled reference workload to facilitate the selection of the set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload. (Reinemann, ¶ 0012; The 'accounting manager' of Reinemann provides information to the 'policy manager' which selects the policy (equivalent to 'set' of applicant)).

As to **Claim 12**, Reinemann fails to particularly call for one or more reference workloads comprise at least a selected one of a route look-up workload, a OSPF workload, a JPEG codec workload, a 3DES encryption/decryption workload, an AES encryption/decryption workload, an IP packet forwarding workload, and a H.323 speech codec workload. Chiu teaches one or more reference workloads comprise at least a selected one of a route look-up workload, a OSPF workload, a JPEG codec workload, a 3DES

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encryption/decryption workload, an AES encryption/decryption workload, 6

an IP packet forwarding workload, and a H.323 speech codec workload. (Chiu, ¶ 0023)

It would have been obvious to a person having ordinary skill in the art at the time of

applicant's invention to modify the teachings of Reinemann by gonging into some

specific detail on what a 'reference workload' is as taught by Chiu to have one or more

reference workloads comprise at least a selected one of a route look-up workload, a

OSPF workload, a JPEG codec workload, a 3DES

encryption/decryption workload, an

AES encryption/decryption workload, an IP packet forwarding workload, and a H.323

speech codec workload.

For the purpose of indicating that the invention is compatible with real world

protocols that would enable it to interact with other real world systems.

As to **Claim 13**, Reinemann anticipates determining a correlation metric between the workload and the reference workload, based on the one or more performance events observed during said monitoring (Reinemann, ¶ 0037; 'Correlation metric ' of applicant is equivalent to 'utilization' of Reinemann.), and observed during 'at least one prior execution of the reference workload; and determining whether the correlation metric exceeds a correlation threshold. (Reinemann, ¶ 0037; 'Correlation threshold' of applicant is equivalent to 'threshold' of Reinemann.)

As to **Claim 14**, Reinemann anticipates receiving the one or more performance events observed during said monitoring; and said monitoring. (Reinemann, 70014; The policy manager monitors the resource utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.)

As to **Claim 15**, Reinemann anticipates the platform; and the method further comprises executing the workload (Reinemann, abstract ; 'Workload' and- 'platform' of applicant is equivalent to 'processors (NOTE # CPU)' and 'network of processors' of Reinemann.), and performing said monitoring. (Reinemann,

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abstract; 'Monitoring' of applicant is equivalent to 'monitor of Reinemann.)

As to **Claim 16**, Reinemann anticipates said performing comprises selecting a set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload (Reinemann, ¶ 0012; The policy manager selects policies and pre-selects based on performance status.); and the method further comprises performing a selected one of applying the selected set of one or more configuration parameter values to configure the platform (Reinemann, abstract; 'Applying' the set of applicant is equivalent 'releasing a portion' of Reinemann.), and providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform. (Reinemann, ¶ 0013; 'Providing information' of applicant is equivalent to 'target range' of parameters of Reinemann.)

As to **Claim 21**, Reinemann anticipates storage medium having stored therein programming instructions designed to enable the apparatus (Reinemann, ¶ 0002; 'Storage medium' of applicant is equivalent to 'disk storage' of Reinemann) perform at least a

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selected one of selecting a set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload (Reinemann, abstract; 'Applying' the set of applicant is equivalent 'releasing a portion' of Reinemann.), and providing information about the determined resembled reference workload to facilitate the selection of the set of one or more configuration parameter values pre-selected for the platform to execute the determined resembled reference workload (Reinemann, ¶ 0012; The 'accounting manager' of Reinemann provides information to the 'policy manager' which selects the policy (equivalent to 'set' of applicant)); and at least one processor coupled to the storage medium to execute the programming instructions. (Reinemann, ¶ 0002)

Reinemann fails to teach how to determine whether a workload executed or being executed by a platform sufficiently resembles a reference workload, based at least in part on one or more performance events observed from monitoring the platform's execution of the workload, and if the workload is determined to sufficiently resemble the reference workload,

However, Reinemann does teach performance events observed from monitoring the platform's execution of the workload

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(Reinemann, ¶ 0014; 'performance events', 'monitoring' and 'workload' of applicant is equivalent to 'resource', 'monitors' and 'processors' of Reinemann.) and Chiu teaches whether a workload resembles a reference workload. See claim 11 for discussions which has been omitted here for brevity.

As to **Claim 22**, Reinemann anticipates programming instructions are designed to enable the apparatus to perform said determine by determining a plurality of correlation metrics between the workload (Reinemann; ¶ 0014: processors) and the reference workload (Reinemann; ¶ 0013: usage patterns), based on the one or more performance events observed during said monitoring, 'observed during at least one prior execution of the reference workload (Reinemann, 70037; 'Correlation metric ' of applicant is equivalent to 'utilization' of Reinemann.); and determining whether at least one of determined correlation metrics exceeds a correlation threshold. (Reinemann, 10037; 'Correlation threshold' of applicant is equivalent to 'threshold' of Reinemann.)

As to **Claim 23**, Reinemann anticipates receiving the one or more performance events observed during said monitoring (Reinemann, ¶ 0014; The policy manager monitors the resource

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utilization. 'Performance events' of applicant is equivalent to 'resource utilization' of Reinemann.); monitoring the execution of the workload to observe the one or more performance events; providing information about the selected set of one or more configuration parameter values to facilitate application of the selected set of one or more configuration parameter values to configure the platform (Reinemann, ¶ 0013, 'Providing information' of applicant. is equivalent to 'target range' of parameters of Reinemann.); and applying the selected set of one or more configuration parameter values to configure the platform. (Reinemann, abstract; 'Set' and 'applying' of applicant IS equivalent to 'policy' and 'releasing a portion' of Reinemann.)

As to **Claim 27**, Reinemann anticipates

a platform to execute a workload (Reinemann, abstract ; 'Workload' and 'platform' of applicant is equivalent to 'processors (NOTE # CPU)' and 'network of processors' of Reinemann.);

a monitor, either coupled to or an integral part of the platform, to observe one or more performance events associated with the platform's execution of the workload (Reinemann, ¶

0012; 'Monitor' of applicant is equivalent to 'interface' if Reinemann.; and

an analyzer coupled to the monitor to receive the one or more performance events observed, and in response (Reinemann, ¶ 0012; 'Analyzer' of applicant is equivalent to 'policy manager' of Reinemann.), at least contribute to selecting if possible, a set of one or more configuration parameters values for application to configure the platform, based at least in part on the one or more performance events observed (Reinemann, abstract; 'Set' and 'applying' of applicant is equivalent to 'policy' and 'releasing a portion' of Reinemann.),

Reinemann fails to teach, wherein the analyzer is adapted to at least contribute by determining whether the workload resembles one of one or more reference workloads, based at least in part on the received one or more performance events observed, the resembled reference workload being employed to facilitate said selection of one of the one or more configuration parameter values.

However, Reinemann does teach a workload (Reinemann; ¶ 0014: processors) and a reference workload (Reinemann; ¶ 0013: usage patterns) and performance events observed, the resembled reference workload being employed to facilitate said selection of one of the one or more configuration parameter values.

(Reinemann, ¶ 0013; 'Analyzer' of applicant is equivalent to 'policy manager' of Reinemann. 'Performance events' of applicant is demonstrated by 'resources operates above the upper threshold' of Reinemann. 'Configuration parameter' of applicant is equivalent to 'parameter configured' of Reinemann.) and Chiu teaches the resemblance of a reference workload. Refer to discussions in claim 11 which has been omitted here for brevity.

As to **Claim 29**, Reinemann anticipates the analyzer is adapted to at least contribute by generating a lookup index to one or more sets of configuration parameter values (Reinemann, ¶ 0013 and abstract; 'Generating a lookup index' is nothing more than values based of current resource workload. 'One or more sets configuration parameter values' of applicant is equivalent to 'parameters configured to specify a target range for each of the resources ...' of Reinemann. 'Configuration parameters' of applicant is equivalent to 'parameters configured' of Reinemann.), to facilitate said selection of one of the one or more configuration parameter values, based at least in part on the received one or more performance events observed. (Reinemann, ¶ 0011; 'Index' of applicant is equivalent to 'archived' by Reinemann.)

As to **Claim 30**, Reinemann anticipates a first networking interface; and the system further comprises a computing device hosting the analyzer, the computing device including a second networking interface to couple the computing device with the platform via a network connection. (Reinemann, ¶ 0012 and ¶ 0019; The analyzer of applicant is equivalent to 'policy manager' of Reinemann. 'First networking interface' and 'second networking interface' of applicant is equivalent to 'user A' and user B' of Reinemann. If both Users A & B can 'identify' resources then there must exists an interface.)

As to **Claim 34**, Reinemann anticipates monitoring at least a selected one of a processor performance counter (Reinemann, ¶ 0011 ; 'Processor performance counter' of applicant is illustrated by the 'accounting manager' of Reinemann.), an OS performance counter (Reinemann, ¶ 0011), and a chipset performance counter (Reinemann, ¶ 0011), while the platform executes the workload.

As to **Claim 35**, Reinemann anticipates one or more of processor configuration parameters values (Reinemann, ¶ 0028; 'Processor configuration parameters' of applicant is equivalent

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to 'memory usage' of Reinemann.), OS configuration parameter values (Reinemann, ¶ 0028; 'OS configuration parameter' of applicant is equivalent to 'processor utilization' of Reinemann.), and chipset configuration parameter values. .

(Reinemann, ¶ 0028; 'Chipset configuration parameter' of applicant is equivalent to 'virtual memory swap file usage' of Reinemann.)

Response to Argument

8. Applicant's arguments filed on Jan 25, 2008 related to Claims 17-20, 24-26, 31, 36 and 37 have been fully considered but are not persuasive.

In reference to Applicant's arguments on pages 10-11:

The previous Office Action dated May 16, 2007, does not present a rationale to show inherency in the index function, "evaluating an index function in view of the one or more performance events observed".

Examiner's response:

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See above rejection of claim 17. An index function is inherent in (Reinemann, ¶ 0011: performance status which reads on the claimed parameters is archived in a log file) because the performance status values are being collected from the CPU and are related to how the processors are "configured" (Reinemann, ¶ 0011), it would clearly be obvious to one skilled in the art to see that such collected values would have a data structure that shows which resources have been allocated to which applications (Reinemann, ¶ 0012), and such a data structure is indexed.

In reference to Applicant's argument on page 13:

Chiu does not meet the limitation of 'whether the performance metric "resembles" the threshold.'

Examiner's response:

As admitted by the applicant, Chiu compares a measured performance metric to a threshold. Comparison to a threshold involves whether the performance metric is above or below the threshold. To a person of ordinary skill in the art, that is precisely what a "performance metric resembling the threshold" means.

The applicant may wish to better define the limitations in claim 11. This claim clearly does not go as far as specifying that each resource or path is chosen based on what work has to be done. Also note the applicant's use of the word "if" in claim 11, line 6. What happens if the workload is not determined to resemble anything?

EN: The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

9. Claims 11-17, 19-24, 26-27, 29-31 and 34-37 are rejected.

Correspondence Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KALPANA BHARADWAJ whose telephone number is (571)270-1641. The examiner can normally be reached on Monday-Friday 7:30am 5:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Vincent can be reached on (571) 272-3080. The fax phone number for the

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organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bharadwaj Kalpana/
Examiner, Art Unit 2129

/David R Vincent/
Supervisory Patent Examiner, Art Unit 2129